



Contribution of the International Children's Center for the UPR Session on Turkey

Overview

1. Turkey's child population is around 24 million, around %35 of the overall population.
2. For the last four years, there has been limited progress in the field of the rights of the child in Turkey.
 - a. Since 2010, Turkey underwent one periodic review of its implementation of the Convention on the Rights of the Child (CRC) in 2012, just in time of Turkey's midterm evaluation of progress made in the first cycle of UPR. Similar recommendations made in UPR were uttered to Turkey by the Committee on the Rights of the Child. Since then very little progress was made by the Turkish Government to address challenges and gaps identified by the Committee.
 - b. Although there are legal advances in transposing CRC into Turkish legal system, there are still many concerns that require legal harmonisation of Turkish laws with the CRC. Recent legal analysis done for UNICEF and the Turkish government revealed that more than 12 clauses need to be changed in the Constitution. In addition to these, 95 laws require major amendments to be in line with the CRC.¹ There is immediate need to run child rights impact evaluations about how existing laws violates the rights of the child in Turkey. Turkey does not have a holistic framework law and policy on child rights.
 - c. Although Turkey accepted to act on banning corporal punishment of children in all settings in the first UPR, no progress has been made on this issue. Corporal punishment is still not explicitly banned in the home, alternative care settings, day care, schools, and penal institutions.
 - d. Although government budget to public institutions providing services to children rose, budget items going to children cannot be identified and monitored to increase accountability. The central government expenditures on social protection, health, social assistance and services account only 13% of the GDP, which is at least 13 point lower than European Union averages. Amongst this amount, only 1.3 % of the GDP is spent for social assistance and services provided to the population under poverty line.² According to a new study, two in three children live in severe material deprivation in Turkey.³
3. Turkey received 22 recommendations on the rights of the child in 2010 out of its first cycle of UPR. Turkey rejected 4 of them which asked the government specific action to counter discrimination based on ethnicity. Two of the rejected recommendations were asking the government to withdraw reservations on the CRC. Turkey withdrew its reservations from CEDAW

¹ Tarhanlı, T., Gül, İ. I., Inceoğlu, A. A., Tokuzlu, L. B., Başalp, N., Karan, U., et al. (2011). Birleşmiş Milletlerin Çocuk Haklarına dair Sözleşmesi ile Türk Hukuk Mevzuatı Karşılaştırmalı Analizi. Ankara: UNICEF. (Comparative Analysis of UNCRC and Turkish Laws) <http://unicef.org.tr/bilgimerkezidetay.aspx?id=86>

² Public Expenditures Monitoring Platform

http://www.kahip.org/site_media/docs/milletvekili_mektup_2012_en.pdf

³ Bahcesehir University Economic Research Centre <http://betam.bahcesehir.edu.tr/en/wp-content/uploads/2014/04/ResearchBrief1642.pdf>

which were comparable to its reservations to the CRC. Because with newly introduced laws in use of mother tongue and use of cultural rights rendered concerned reservations to the CRC unnecessary.

4. Although in two legal texts (Child Protection Law and Penal Code) the child is defined as any person under 18, the child is not defined in the constitution as a legal person with evolving capacities to exercise her/his own rights. Lack of constitutional acknowledgement creates discrepancies in the exercise of rights in a number of laws and execution of laws into practices.
5. Although, Ministry of Family and Social Policies (MoFSP) is the governmental agency designated with the responsibility of overseeing the implementation of several child rights international laws in Turkey, there is no proper child protection system in Turkey due to the following reasons:
 - a. Legal and policy framework is highly disbursed thus does not provide a child protection system with a holistic view of the child,
 - b. The CRC has not been transposed into the national law and national law has not been harmonised with the CRC and other international child rights laws. For example regarding juvenile justice, although in 2009 the Ministry of Justice revealed a judicial reform strategy and an action plan to implement the strategy (<http://www.sgb.adalet.gov.tr/yrs.html>), neither the strategy nor the action plan was approved in or endorsed by the Parliament. There is only juvenile justice section in the judicial reform strategy and action plan, which is limited only to increase in the number of juvenile courts and correction centres, missing the preventive and protective aspects of child protection,
 - c. Different aspects of child protection are dealt with different government ministries and agencies without holistic consideration of children's developmental needs and rights, for there is no clear legal division of responsibilities, services are scattered and service providers may avoid liability and refer children in need to other agencies leaving children's needs in limbo and rights infringed,
 - d. There is no complaint and effective remedy mechanisms accessible to children,
 - e. There is no rights-based monitoring mechanism that would provide disaggregated data in matters affecting children.
6. There is also an urgent need to set up rights based child statistics and data collection mechanism to enable early warning for better child protection measures for children who need most. There are advances in collecting data on children's situations but they are not publicly available, not easily accessible, highly scattered in different government departments.
7. Age of criminal responsibility was raised from 11 to 12, which is still too low, considering the fact that there are numerous negative issues for children in Turkey in their meeting their developmental potential, from education (primary education ends in 15) to poverty (1 in 4 children live in poverty), from health (stunting and developmental health concerns are still high) to participation in democratic decision making processes (children cannot participate in any democratic decision making process until they reach 18).
8. Although age of marriage was raised to 17 for both sexes, %20 of all recorded marriages (600,138 persons) is girl child under 18 vis-à-vis %2 for boy child.⁴ %2.5 of women's ages are unknown in the marriage statistics vis-à-vis %0.5 of men's ages are unknown.

⁴ Statistics Agency of Turkey, 2013

http://rapor.tuik.gov.tr/reports/rwservlet?demografidb2=&report=EVRAPOR25.RDF&p_yil1=2013&p_dil=1&p_kod=1&desformat=html&ENVID=demografiEnv

9. Although the new interim Constitution has some components of the umbrella rights of CRC, they are tied to family environment only. Amended Article 10 (equality provision) supposedly introduces the concept of affirmative action/positive discrimination into the Constitution and thus into the Turkish legal system. On the contrary, the article deals with children along with the elderly, disabled people, widows and orphans of martyrs, invalids and veterans to provide them with social assistance. Such social assistance is already in law and in practice in Turkey. Amended Article 10 does take children as a subject of care and social protection for victims not as a rights holder. The article itself does not define positive discrimination either.
10. Although child rights NGOs had been calling for a separate article on child rights in the new Constitution, Article 41 (family protection provision) is amended to be renamed "Protection of the Family and Children's Rights" thus putting child rights in the context of family union and protection of the institution of family only. The provision added to the article in relation to child rights is:
 - Each child has the right to
 - enjoy adequate protection and care
 - maintain contact with both parents with his or her parents unless this is deemed to be incompatible with the child's best interests
 - The State provides protective measures against child abuse, sexuality, and violence against children
11. There is mention of equality in the Constitution but Turkish legal system yet to have definition of discrimination and prohibition of discrimination is not fully guaranteed in the legal system.
12. There is also no child specific system of accessible complaints and redress mechanism in Turkey. Lack of such a system increases impunity for crimes and discrimination against children. Concepts of rule of law and justice become a distant reality for children, which in turn keep children from exercising their own rights in line with their evolving capacities.
13. Government's attitude towards working with NGOs working for/with children and children themselves remained highly arbitrary; there is still lack of formal child and civil society participation mechanism.

What numbers are saying?

14. Key information from recent research findings and statistics of Turkish Office of Statistics draws a bleak picture for children in Turkey in terms of their rights. Some of them are outlined below:
 - a. Although the minimum legal age for work is set to 15, number of 6 - 14 old children working is around 300,000 according to official statistics.⁵
 - b. Child marriages account for around %23 of all marriages, %91 of them girls.⁶
 - c. Court cases involving sexual assaults against children rose from 4,500 in 2002 to 17,500 cases in 2012.⁷
 - d. Number of children brought/come to the security units (police, gendarme etc) rose from 58.000 in 2007 to 245.000 in 2012.⁸
 - e. In a study commissioned by UNICEF Turkey and Children's Services in 2010 on domestic violence, it is revealed that %56 of children from 7-18 years of age experience physical

⁵ Child Labour Household Survey http://www.tuik.gov.tr/IcerikGetir.do?istab_id=133

⁶ Marriage Statistics http://www.tuik.gov.tr/VeriTabanlari.do?ust_id=109&vt_id=21

⁷ Ministry of Justice Statistics http://www.adlisicil.adalet.gov.tr/istatistik_2012/ist_tab.htm

⁸ Child Statistics of the Turkish Statistics Office
http://www.tuik.gov.tr/Kitap.do?metod=KitapDetay&KT_ID=11&KITAP_ID=269

violence while %49 of those children experience emotional violence and %10 witness sexual violence.⁹ In another recent study supported by Bernard van Leer Foundation in 2013, it is revealed that %4 of children under 8 years of age experience high emotional violence, while %73 of children under 8 experience lower forms of emotional violence; %23 of them experience some of physical violence while only %1 of them are exposed to high levels of physical violence; %67 of children under 8 witness domestic violence in their homes. Ministry of Justice statistics in 2011 revealed that around half of all crimes against sexual integrity of a person are committed against children, 18334 child sexual abuse and exploitation cases in courts.¹⁰

- f. According to a report by Human Rights Association, 569 children lost their lives in clashes between 1988 and 2013.¹¹ Another report by Turkish Human Rights Foundation (TİHV, 2011) claimed that 241 children were killed by state security forces, 20 of them while in custody on remand, 3 of them under arrest, 72 of them in extrajudicial killings, 128 of them due to landmines and un-exploded ordinances, 18 of them in summary executions.¹²
- g. During peaceful protests in May-June 2013, it is reported that at least 294¹³ children were detained and countless baseless charges were brought against those children who were exercising their right to freedom of peaceful assembly. There were several casualties amongst children either in protests or as bystanders. According to a report by Agenda Child Association, 8 children died due to being shot by the police with tear gas canisters, and further 146 children wounded for the same reason between 2006-2014.¹⁴
- h. Although trial durations for children decreasing steadily for the last four years, it is still very high. Latest statistics available shows us that average trial duration in children's courts was 298 days, 310 days in child heavy penalty courts, and 229 in criminal courts. Considering the fact that the number of detainee children from 12-17 (unfortunately children who are 18 are not included in the new statistics) is 1141 while number of convicted children is 498, it is safe to say that children spend behind bars unnecessarily and for almost a year of their lives if not more with appeal court durations added.
- i. Girl child is still being regarded as a commodity and early (forced) marriages are still an issue to consider. There are other incidents that reveal public perception towards girl child in Turkey. For example, in one recent news story in 2010, it is reported that in Siirt (Eastern Turkey), 9 girls (4 of them sisters) in a primary school was raped and sold for sexual purposes by more than 100 men including school administration for two years.¹⁵ In addition to such crimes and rights violations, Report of the Parliamentary Investigation Commission on honour killings revealed that around 16 % of victims of all honour killings

⁹ Domestic Violence in Turkey Research Report, Social Services and UNICEF, 2010.

¹⁰ <http://www.5te1.cocukhaklariizleme.org/tbmm-yazili-soru-onergeleri-sonucu-verilen-cinsel-istismar-istatistikleri.html>

¹¹ http://www.bianet.org/english/human-rights/154282-children-killed-by-the-state?bia_source=rss

¹² <http://bianet.org/bianet/insan-haklari/130650-tihv-devlet-11-yilda-241-cocuk-oldurdu>

¹³ <http://www.ihd.org.tr/index.php/raporlar-mainmenu-86/el-raporlar-mainmenu-90/2681-gezi-park-direnii-ve-sonrasnda-yaananlara-likin-deerlendirme-raporu.html>

¹⁴ http://issuu.com/gundemcocuk/docs/19.04.2014-t_rkiye_de_ocu_u

¹⁵ <http://www.cocukhaklariizleme.org/harita/reports/view/99>

were children (10 % girls, 6 % boys) from 2000-2005. Total number of identified honour killings in that period was around 2000.¹⁶

15. Most of crimes against children go unpunished and this fuels impunity around violence against children in Turkey.

Recommendations

16. Define children in Constitution as anyone under 18 with evolving capacities to exercise their own rights as enshrined in the Convention on the Rights of the Child (CRC);
17. Harmonise other laws to be compatible with the CRC, its protocols and other international child rights law, especially the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse and Cybercrime Conventions;
18. Ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure;
19. Ratify the Council of Europe Convention on Action against Trafficking;
20. Repeal Criminal Code Article 232/2 about the concept of “disciplinary power” as a step towards banning corporal punishment in all settings. Introduce a clear article banning all forms of violence against children in all settings including home, school, alternative care settings, early childhood care and education settings, penal institutions;
21. Repeal law on meetings and demonstrations in decreasing the age of participation or organisation of meetings and demonstrations from 19 years of age to 12 to enable children to exercise their right to freedom of peaceful assembly;
22. Increase the age of criminal responsibility from 12 years of age to at least 15. Use detention, arrest and incarceration of children as a last resort and for the shortest period of time possible;
23. Set up helplines (telephone and otherwise) specifically designed for and with children and NGOs, similar to EU’s 116000 missing children helpline;
24. Set up accessible complaints mechanisms for children, considering the regional, linguistic, disability, economic and social diversity of them all. Make mediation and courts systems accessible to children by making laws understandable to children, by including information about how to claim one’s rights in formal school curriculum;
25. Raise the age of marriage to 18, include child protection information in pre-school and primary school formal curriculum (the one similar to Council of Europe’s ONE in FIVE campaign), include reproductive health education into formal curriculum for secondary and high school students.

¹⁶ [http://www.tbmm.gov.tr/sirasayi/donem22/yil01/ss1140_BOLUM%20I%20\(0001-0153\).pdf](http://www.tbmm.gov.tr/sirasayi/donem22/yil01/ss1140_BOLUM%20I%20(0001-0153).pdf)